

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

04 JUN 25 AM 11:18  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

In the Matter of )

Timberland Partners Management Company )  
Minneapolis, Minnesota )

Respondent )

Docket No. TSCA-07-2004-0224

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Timberland Partners Management Company (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**FACTUAL ALLEGATIONS**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

### **Parties**

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief, Radiation, Asbestos Lead and Indoor Programs Branch, EPA, Region 7.

4. The Respondent is Timberland Partners Management Company.

### **Statutory and Regulatory Background**

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745, Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

### **Alleged Violations**

6. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

**Allegations Pertaining to All Counts**

7. Respondent is, and was at all times referred to herein, a “person” within the meaning of TSCA.

8. Respondent is an “agent” as that term is defined by 40 C.F.R. § 745.103, in that Respondent entered into a contract with Timberland Partners, XXIV, LLP and Timberland Partners, XVI, LLP to represent Timberland Partners, XXIV, LLP and Timberland Partners, XVI, LLP for the purpose of leasing Timberland Pointe and Timberland Springs Apartments, respectively.

9. The properties referenced above are “target housing” as that term is defined by 40 C.F.R. § 745.103.

10. Information collected shows that Respondent entered into a contract to lease 3816 106<sup>th</sup> Street, Apt. 56 at Timberland Springs Apartments on January 9, 2003.

**Count 1**

**Failure to Provide Pamphlet**

The facts stated in Paragraphs 1 through 10 above, are herein restated and incorporated.

11. Information collected shows that Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing.

12. Respondent’s failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

Failure to Include Lead Warning Statement

The facts stated in Paragraphs 1 through 10 above, are herein restated and incorporated.

13. Information collected shows that Respondent failed to provide the lessee with the Lead Warning Statement before the lessee was obligated under a contract to lease target housing.

14. Respondent's failure to provide the Lead Warning Statement is a violation of 40 C.F.R. §§ 745.113(b)(1) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 3

Failure to Include Disclosure Statement

The facts stated in Paragraphs 1 through 10 above, are herein restated and incorporated.

15. Information collected shows that Respondent failed to provide the lessee with a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

16. Respondent's failure to provide the lessee with a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards is a violation of 40 C.F.R. §§ 745.113(b)(2) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 4

Failure to List Records or Reports

The facts stated in Paragraphs 1 through 10 above, are herein restated and incorporated.

17. Information collected shows that Respondent failed to provide the lessee with a list of any records or reports available to the Lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing or indicating that no such reports or records exist.

18. Respondent's failure to provide the lessee with a list of any records or reports available to the Lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing or indicating that no such reports or records exist is a violation of 40 CFR § 745.113(b)(3) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

**CONSENT AGREEMENT**

19. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

20. Respondent admits the factual allegations set forth above.

21. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

22. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

23. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

24. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Four Thousand and Four Hundred Dollars (\$4,400) to be paid within thirty (30) days of the effective date of the Final Order.

25. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 18 above, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

#### **FINAL ORDER**

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a mitigated civil penalty of Four Thousand and Four Hundred Dollars (\$4,400) within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251.

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

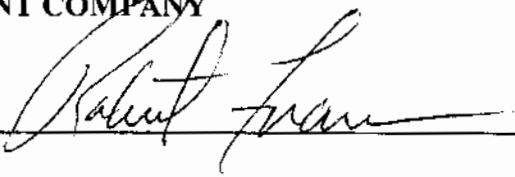
Chris Dudding, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

**RESPONDENT**  
**TIMBERLAND PARTNERS MANAGEMENT COMPANY**

Date: \_\_\_\_\_

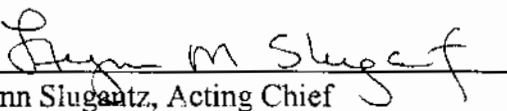
By: \_\_\_\_\_

  
\_\_\_\_\_  
Robert Franson Pres  
Print Name Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

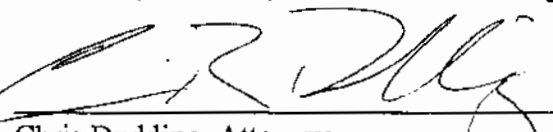
Date: 6/1/04

By: \_\_\_\_\_

  
Lynn Slugatz, Acting Chief  
Radiation, Asbestos, Lead and Indoor Programs Branch

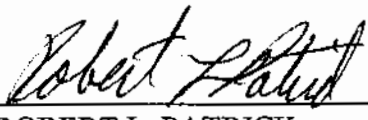
Date: 5/24/04

By: \_\_\_\_\_

  
Chris Dudding, Attorney  
Office of Regional Counsel

**IT IS SO ORDERED.** This Order shall become effective immediately.

Date: June 25, 2004

  
\_\_\_\_\_  
ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Timberland Partners Management Company, Respondent  
Docket No. TSCA-07-2004-0224

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Chris Dudding  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

Jeffrey S. Johnson  
Barna, Guzy & Steffen, Ltd.  
400 Northtown Financial Plaza  
200 Coon Rapids Boulevard  
Minneapolis, Minnesota 55433-5894

Dated: 6/28/04

  
Kathy Robinson  
Regional Hearing Clerk